

HOUSE BILL 368

By Richardson

AN ACT to enact the "Medical Marijuana Act of 2009" and to amend Tennessee Code Annotated, Title 39; Title 63 and Title 68, relative to the use of marijuana for medical purposes.

WHEREAS, it is appropriate to ensure that seriously ill Tennesseans have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of terminal cases of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief; and

WHEREAS, it is appropriate to ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction; and

WHEREAS, it is appropriate to encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana; and

WHEREAS, nothing in this act shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes; now, therefore

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Medical Marijuana Act of 2009".

SECTION 2. Tennessee Code Annotated, Title 68, Chapter 1, is amended by adding the following as a new part:

Section 68-1-2401. As used in this part, unless the context otherwise requires:

(1) "Attending physician" means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the board of medical examiners or board of osteopathic examination and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient is a terminal patient and whether the medical use of marijuana is appropriate;

(2) "Department" means the department of health;

(3) "Identification card" means a document issued by the department of health that identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any;

(4) "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this part;

(5) "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

(A) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a health care facility licensed pursuant to chapter 11 of this title, a hospice, or a home health agency licensed pursuant to chapter 11 of this title, the owner or operator, or no more than three (3) employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card;

(B) An individual who has been designated as a primary caregiver by more than one (1) qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver;

(C) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card; and

(D) A primary caregiver shall be at least eighteen (18) years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to chapter 11, part 18 of this title;

(6) "Qualified patient" means a person who is entitled to the protections of § 68-1-2402, but who does not have an identification card pursuant to this part;

(7) "Terminal patient" means any human being afflicted with any disease, illness, injury, or condition from which there is no reasonable medical expectation of recovery and which disease, injury, illness or condition will, as a medical probability, result in the death of such human being within a short period of time regardless of the use or discontinuance of medical treatment implemented for the purpose of sustaining life, or the life processes; and

(8) "Written documentation" means accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain

the information required by § 68-1-2402, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

Section 68-1-2402.

(a) Notwithstanding any other provision of law to the contrary, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a terminal patient for medical purposes.

(b) In accordance with the provisions of this part, §§ 39-17-417, 39-17-418, relating only to the possession of marijuana, and 39-17-425, relating only to the cultivation of marijuana, shall not apply to a terminal patient, or to the patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendations or approval of a physician.

Section 68-1-2403.

(a)

(1) The department shall establish and maintain a voluntary program for the issuance of identification cards to qualified terminal patients who satisfy the requirements of this part and voluntarily apply to the identification card program.

(2) The department shall establish and maintain a twenty-four-hour, toll-free telephone number that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of an identification card issued by the department, until a cost-effective Internet Web-based system can be developed for this purpose.

(b) Every county health department, or the county's designee, shall do all of the following:

(1) Provide applications upon request to individuals seeking to join the identification card program;

(2) Receive and process completed applications in accordance with § 68-1-2404;

(3) Maintain records of identification card programs;

(4) Utilize protocols developed by the department pursuant to subdivision (d)(1); and

(5) Issue identification cards developed by the department to approved applicants and designated primary caregivers.

(c) The county board of supervisors may designate another health-related governmental or nongovernmental entity or organization to perform the functions described in subsection (b), except for an entity or organization that cultivates or distributes marijuana.

(d) The department shall develop all of the following:

(1) Protocols that shall be used by a county health department or the county's designee to implement the responsibilities described in subsection (b), including, but not limited to, protocols to confirm the accuracy of information contained in an application and to protect the confidentiality of program records;

(2) Application forms that shall be issued to requesting applicants; and

(3) An identification card that identifies a person authorized to engage in the medical use of marijuana and an identification card that identifies the person's designated primary caregiver, if any. The two (2) identification cards developed pursuant to this subsection (d) shall be easily distinguishable from each other.

(e) No person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in an amount established pursuant to this act, unless there is reasonable cause to believe that the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the provisions of this part.

(f) It shall not be necessary for a person to obtain an identification card in order to claim the protections of § 68-1-2402.

Section 68-1-2404.

(a) A person who seeks an identification card shall pay the fee, as provided in § 68-1-2409, and provide all of the following to the county health department or the county's designee on a form developed and provided by the department:

(1) The name of the person, and proof of the person's residency within the county;

(2) Written documentation by the attending physician in the person's medical records stating that the person has been diagnosed as a terminal patient and that the medical use of marijuana is appropriate;

(3) The name, office address, office telephone number, and Tennessee medical license number of the person's attending physician;

(4) The name and the duties of the primary caregiver; and

(5) A government-issued photo identification card of the person and of the designated primary caregiver, if any. If the applicant is a person under eighteen (18) years of age, a certified copy of a birth certificate shall be deemed sufficient proof of identity.

(b) If the person applying for an identification card lacks the capacity to make medical decisions, the application may be made by the person's legal representative, including, but not limited to, any of the following:

(1) A conservator with authority to make medical decisions;

(2) An attorney-in-fact under a durable power of attorney for health care or surrogate decision maker authorized under another advanced health care directive; or

(3) Any other individual authorized by statutory or decisional law to make medical decisions for the person.

(c) The legal representative described in subsection (b) may also designate in the application an individual, including the legal representative, to serve as a primary caregiver for the person, provided that the individual meets the definition of a primary caregiver.

(d) The person or legal representative submitting the written information and documentation described in subsection (a) shall retain a copy thereof.

Section 68-1-2405.

(a) Within thirty (30) days of receipt of an application for an identification card, a county health department or the county's designee shall do all of the following:

(1) For purposes of processing the application, verify that the information contained in the application is accurate. If the person is less than eighteen (18) years of age, the county health department or its designee shall also contact the parent with legal authority to make medical decisions, legal guardian, or other person or entity with legal authority to make medical decisions, to verify the information;

(2) Verify with the board of medical examiners or the board of osteopathic examination that the attending physician has a license in good standing to practice medicine or osteopathy in the state;

(3) Contact the attending physician by facsimile, telephone, or mail to confirm that the medical records submitted by the patient are a true and correct copy of those contained in the physician's office records. When contacted by a county health department or the county's designee, the attending physician shall confirm or deny that the contents of the medical records are accurate;

(4) Take a photograph or otherwise obtain an electronically transmissible image of the applicant and of the designated primary caregiver, if any; and

(5) Approve or deny the application. If an applicant who meets the requirements of § 68-1-2404 can establish that an identification card is needed on an emergency basis, the county or its designee shall issue a temporary identification card that shall be valid for thirty (30) days from the date of issuance. The county, or its designee, may extend the temporary identification card for no more than thirty (30) days at a time, so long as the applicant continues to meet the requirements of this paragraph.

(b) If the county health department or the county's designee approves the application, it shall, within twenty-four (24) hours, or by the end of the next working day of approving the application, electronically transmit the following information to the department:

(1) A unique user identification number of the applicant;

(2) The date of expiration of the identification card; and

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(c) The county health department or the county's designee shall issue an identification card to the applicant and to the applicant's designated primary caregiver, if any, within five (5) working days of approving the application.

(d) In any case involving an incomplete application, the applicant shall assume responsibility for rectifying the deficiency. The county shall have thirty (30) days from the receipt of information from the applicant pursuant to this subsection to approve or deny the application.

Section 68-1-2406.

(a) An identification card issued by the county health department shall be serially numbered and shall contain all of the following:

- (1) A unique user identification number of the cardholder;
- (2) The date of expiration of the identification card;
- (3) The name and telephone number of the county health department or the county's designee that has approved the application;
- (4) A twenty-four-hour, toll-free telephone number, to be maintained by the department, that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of the card; and
- (5) Photo identification of the cardholder.

(b) A separate identification card shall be issued to the person's designated primary caregiver, if any, and shall include a photo identification of the caregiver.

Section 68-1-2407.

(a) The county health department or the county's designee may deny an application only for any of the following reasons:

(1) The applicant did not provide the information required by § 68-1-2404, and upon notice of the deficiency pursuant to § 68-1-2405(d), did not provide the information within thirty (30) days;

(2) The county health department or the county's designee determines that the information provided was false; or

(3) The applicant does not meet the criteria set forth in this part.

(b) Any person whose application has been denied pursuant to subsection (a) may not reapply for six (6) months from the date of denial unless otherwise authorized by the county health department or the county's designee or by a court of competent jurisdiction.

(c) Any person whose application has been denied pursuant to subsection (a) may appeal that decision to the department. The county health department or the county's designee shall make available a telephone number or address to which the denied applicant can direct an appeal.

Section 68-1-2408.

(a) An identification card shall be valid for a period of one (1) year.

(b) Upon annual renewal of an identification card, the county health department or its designee shall verify all new information and may verify any other information that has not changed.

(c) The county health department or the county's designee shall transmit its determination of approval or denial of a renewal to the department.

Section 68-1-2409.

(a) The department shall establish application and renewal fees for persons seeking to obtain or renew identification cards that are sufficient to cover the expenses incurred by the department, including the startup cost, the cost of reduced fees for

medical assistance beneficiaries in accordance with subsection (b), the cost of identifying and developing a cost-effective Internet Web-based system, and the cost of maintaining the twenty-four-hour toll-free telephone number. Each county health department or the county's designee may charge an additional fee for all costs incurred by the county or the county's designee for administering the program pursuant to this part.

(b) Upon satisfactory proof of participation and eligibility in the medical assistance program, operating pursuant to title 71, chapter 5, part 1, a medical assistance beneficiary shall receive a fifty percent (50%) reduction in the fees established pursuant to this section.

Section 68-1-2410.

(a) A person who possesses an identification card shall:

(1) Within seven (7) days, notify the county health department or the county's designee of any change in the person's attending physician or designated primary caregiver, if any; and

(2) Annually submit to the county health department or the county's designee the following:

(A) Updated written documentation of the person's terminal medical condition; and

(B) The name and duties of the person's designated primary caregiver, if any, for the forthcoming year.

(b) If a person who possesses an identification card fails to comply with this section, the card shall be deemed expired. If an identification card expires, the identification card of any designated primary caregiver of the person shall also expire.

(c) If the designated primary caregiver has been changed, the previous primary caregiver shall return such person's identification card to the department or to the county health department or the county's designee.

(d) If the owner or operator or an employee of the owner or operator of a provider has been designated as a primary caregiver pursuant to § 68-1-2401(5)(A), of the qualified patient or person with an identification card, the owner or operator shall notify the county health department or the county's designee, pursuant to § 68-1-2404, if a change in the designated primary caregiver has occurred.

Section 68-1-2411.

(a) Subject to the requirements of this part, the individuals specified in subsection (b) shall not be subject, on that sole basis, to criminal liability under title 39, chapter 17, part 4. However, nothing in this section shall authorize the individual to smoke or otherwise consume marijuana unless otherwise authorized by this part, nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit.

(b) Subsection (a) shall apply to all of the following:

(1) A qualified patient or a person with an identification card who transports or processes marijuana for his or her own personal medical use;

(2) A designated primary caregiver who transports, processes, administers, delivers, or gives away marijuana for medical purposes, in amounts not exceeding those established in § 68-1-2412(a), only to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver; and

(3) Any individual who provides assistance to a qualified patient or a person with an identification card, or such individual's designated primary

caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person.

(c) A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this part, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under title 39, chapter 17, part 4.

Section 68-1-2412.

(a) A qualified patient or primary caregiver may possess no more than eight (8) ounces of dried marijuana per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than six (6) mature or twelve (12) immature marijuana plants per qualified patient.

(b) If a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs.

(c) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section.

(d) The attorney general and reporter may recommend modifications to the possession or cultivation limits set forth in this section. These recommendations, if any, shall be made to the general assembly no later than December 1, 2009, and may be made only after public comment and consultation with interested organizations,

including, but not limited to, patients, health care professionals, researchers, law enforcement, and local governments. Any recommended modification shall be consistent with the intent of this part and shall be based on currently available scientific research.

(e) A qualified patient or a person holding a valid identification card, or the designated primary caregiver of that qualified patient or person, may possess amounts of marijuana consistent with this part.

Section 68-1-2413. Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the state of Tennessee in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under title 39, chapter 17, part 4.

Section 68-1-2414. A state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.

Section 68-1-2415.

(a) Nothing in this part shall require any accommodation of any medical use of marijuana on the property or premises of any place of employment or during the hours of employment or on the property or premises of any jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained.

(b) Notwithstanding subsection (a), a person shall not be prohibited or prevented from obtaining and submitting the written information and documentation necessary to apply for an identification card on the basis that the person is incarcerated in a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained.

(c) Nothing in this part shall prohibit a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained, from permitting a prisoner or a person under arrest who has an identification card, to use marijuana for medical purposes under circumstances that will not endanger the health or safety of other prisoners or the security of the facility.

(d) Nothing in this part shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical use of marijuana.

Section 68-1-2416. Nothing in this part shall authorize a qualified patient or person with an identification card to engage in the smoking of medical marijuana under any of the following circumstances:

- (1) In any place where smoking is prohibited by law;
- (2) In or within one thousand (1,000) feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence;
- (3) On a school bus;
- (4) While in a motor vehicle that is being operated; or
- (5) While operating a boat.

Section 68-1-2417.

(a)

- (1) Any criminal defendant who is eligible to use marijuana pursuant to § 68-1-2402 may request that the court confirm that the defendant is allowed to use medical marijuana while the defendant is on probation or released on bail.

(2) The court's decision and the reasons for the decision shall be stated on the record and an entry stating those reasons shall be made in the minutes of the court.

(3) During the period of probation or release on bail, if a physician recommends that the probationer or defendant use medical marijuana, the probationer or defendant may request a modification of the conditions of probation or bail to authorize the use of medical marijuana.

(4) The court's consideration of the modification request authorized by this subsection (a) shall comply with the requirements of this section.

(b)

(1) Any person who is to be released on parole from a jail, state prison, school, road camp, or other state or local institution of confinement and who is eligible to use medical marijuana pursuant to § 68-1-2402 may request that such person be allowed to use medical marijuana during the period such person is released on parole. A parolee's written conditions of parole shall reflect whether or not a request for a modification of the conditions of the parolee's parole to use medical marijuana was made, and whether the request was granted or denied.

(2) During the period of the parole, where a physician recommends that the parolee use medical marijuana, the parolee may request a modification of the conditions of the parole to authorize the use of medical marijuana.

(3) Any parolee whose request to use medical marijuana while on parole was denied may pursue an administrative appeal of the decision. Any decision on the appeal shall be in writing and shall reflect the reasons for the decision.

(4) The administrative consideration of the modification request authorized by this subsection (b) shall comply with the requirements of this section.

Section 68-1-2418. No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based solely on the fact that the licensee has performed acts that are necessary or appropriate to carry out the licensee's role as a designated primary caregiver to a person who is a qualified patient or who possesses a lawful identification card issued pursuant to § 68-1-2405. However, this section shall not apply to acts performed by a physician relating to the discussion or recommendation of the medical use of marijuana to a patient. These discussions or recommendations, or both, shall be governed by § 68-1-2402.

Section 68-1-2419.

(a) A person specified in subsection (b) shall be subject to the following penalties:

(1) For the first offense, the person has committed a Class B misdemeanor; and

(2) For a second or subsequent offense, the person has committed a Class A misdemeanor.

(b) Subsection (a) applies to any of the following:

(1) A person who fraudulently represents a medical condition or fraudulently provides any material misinformation to a physician, county health department or the county's designee, or state or local law enforcement agency or officer, for the purpose of falsely obtaining an identification card;

(2) A person who steals or fraudulently uses any person's identification card in order to acquire, possess, cultivate, transport, use, produce, or distribute marijuana;

(3) A person who counterfeits, tampers with, or fraudulently produces an identification card; and

(4) A person who breaches the confidentiality requirements of this part to information provided to, or contained in the records of, the department or of a county health department or the county's designee pertaining to an identification card program.

(c) In addition to the penalties prescribed in subsection (a), any person described in subsection (b) may be precluded from attempting to obtain, or obtaining or using, an identification card for a period of up to six (6) months at the discretion of the court.

(d) In addition to the requirements of this part, the attorney general and reporter shall develop and adopt appropriate guidelines to ensure the security and nondiversion of marijuana grown for medical use by patients qualified under this part.

Section 68-1-2420. Nothing in this part shall prevent a city or other local governing body from adopting and enforcing laws consistent with this act.

SECTION 3. If any section, subdivision, sentence, clause, phrase, or portion of this act is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion thereof.

SECTION 4. This act shall take effect July 1, 2009, the public welfare requiring it.